



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[EPA-R04-UST-2020-0248; FRL-10009-90-Region 4]

Commonwealth of Kentucky: Tentative Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of tentative determination on application of the Commonwealth of Kentucky for final approval, public hearing opportunity, and public comment period.

SUMMARY: The Commonwealth of Kentucky (Commonwealth or State) has applied for final approval of its Underground Storage Tank (UST) Program under Subtitle I of the Resource Conservation and Recovery Act (RCRA or Act). The Environmental Protection Agency (EPA) has reviewed the Commonwealth's application and made the tentative decision that the State's UST Program application satisfies all the requirements necessary to qualify for final approval. The State's UST Program application is available for public review and comment. A public hearing will be held to solicit comments on the application if sufficient public interest is expressed. This **Federal Register** notice solicits requests for a public hearing and comments on the State's application.

DATES: Comments and/or request for a public hearing on this tentative determination must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. A public hearing will be held no earlier than **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE**

FEDERAL REGISTER] if sufficient public interest is expressed. The EPA will determine by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, whether there is sufficient interest to warrant a public hearing. The Commonwealth will be invited to participate in any public hearing held by the EPA on this action. Please see **SUPPLEMENTARY INFORMATION**, Item C, for details.

ADDRESSES: For detailed instructions and additional information on the rulemaking process, please see **SUPPLEMENTARY INFORMATION**, Item C.

FOR FURTHER INFORMATION CONTACT: Ben Singh, RCRA Programs and Cleanup Branch, Land, Chemicals and Redevelopment Division, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960; Phone number: (404) 562-8922; e-mail address: *singh.ben@epa.gov*. Please contact Ben Singh by phone or email for further information.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of RCRA, 42 U.S.C. 6991c, authorizes the EPA to approve state UST programs to operate in lieu of the Federal UST program. Pursuant to RCRA section 9004(b), approval may be granted if the state program: provides for adequate enforcement of compliance with the UST standards of RCRA section 9004(a); is “no less stringent” than the Federal program for the seven elements set forth at RCRA section 9004(a)(1) through (7); and includes the notification requirements of RCRA section 9004(a)(8).

B. Commonwealth of Kentucky

The Kentucky Department for Environmental Protection (KYDEP) within the Energy and Environment Cabinet is the lead implementing agency for the UST Program in the State. On October 7, 2019, in accordance with 40 CFR 281.50, the State submitted an application seeking Federal approval of the State UST Program. The application was determined complete by the EPA on March 13, 2020. Per the application, the most recent amendments to the KYDEP UST regulations became effective April 5, 2019 and include revisions which correspond to the EPA final rule published on July 15, 2015 (80 FR 41566), which revised the 1988 UST regulations and the 1988 state program approval (SPA) regulations. The KYDEP has broad statutory and regulatory authority to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases, pursuant to Title XVIII of the Kentucky Revised Statutes (KRS), Chapter 224, Subchapter 60, and Title 401 of the Kentucky Administrative Regulations (KAR), Chapter 42 (2019). In accordance with the requirements of 40 CFR 281.50(b), the State provided an opportunity for public notice and comment during the development of its UST regulations.

C. Public Participation

Submit comments and requests for public hearings, identified by Docket ID No. EPA-R04-UST-2020-0248, at <https://www.regulations.gov> (our preferred method). Follow the online instructions for submission. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket without change. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied

by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit:

<https://www.epa.gov/dockets/commenting-epa-dockets>. The EPA encourages electronic submittals, but if you are unable to submit electronically or need other assistance, please contact Ben Singh, the contact listed in the **FOR FURTHER INFORMATION CONTACT** provision above. Please also contact Ben Singh if you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you.

Out of an abundance of caution for members of the public and our staff, the EPA Region 4 Offices are closed to public visitors to reduce the risk of transmitting COVID-19. We encourage the public to submit comments via <https://www.regulations.gov>. For further information on the EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>. All documents in the docket are available on the <https://www.regulations.gov> website.

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

D. Statutory and Executive Order (EO) Reviews

This action merely notifies the public of the EPA's tentative determination to approve the Commonwealth's UST Program pursuant to RCRA section 9004, 42 U.S.C. 6991c, and does not impose additional requirements beyond those already imposed by State law. For that reason, these actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because UST program approvals are exempted under Executive Order 12866;

- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Are not subject to the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with RCRA; and

- Do not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

- Do not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. The rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous substances, Petroleum, Reporting and recordkeeping requirements, State program approval, Underground storage tanks.

Authority: This action is issued under the authority of Sections 2002(a), 7004(b), 9004, 9005 and 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6974(b), 6991(c), 6991(d), and 6991(e).

Mary Walker,
Regional Administrator, Region 4.

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